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ATTORNEYS FOR NUVELL CREDIT COMPANY LLC

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MONTANA

IN RE: ) Bankruptcy No.: 06-60855-RBK-11  
 )  
INCREDIBLE AUTO SALES LLC, ) MOTION TO MODIFY STAY  
 )  
 )  
Debtor. )  
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The Motion of Nuvell Credit Company LLC (“Nuvell”), secured creditor herein, respectfully represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the Bankruptcy Code on October 17, 2006.

2. Debtor is in possession of collateral which, upon information and belief, is owned by a third party and which is subject to Nuvell’s first priority lien. Pursuant to Mont. LBR 4001-1, Nuvell provides the following information:

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2       A.     The present balance owing to Nuvell, excluding any pre-computed interest or  
3 other unearned charges, is \$14,261.67.

4       B.     The date upon which the subject debt was incurred was August 30, 2004.  
5       C.     Nuvell holds a security interest upon the following described property which,  
6 upon information and belief, is in possession of the Debtor:

7                  2004 Kia Spectra, VIN KNAFE121445008986 (the "Vehicle").

8       D.     On August 30, 2004, Diane Gates and Kenneth J. Gates entered into a Retail  
9 Installment Contract and Security Agreement (the "Contract"), in writing, with Incredible  
10 Auto Sales LLC of Billings, Montana, for the Gates' purchase of the Vehicle. A true and  
11 correct copy of the Contract is attached hereto as Exhibit "A" and by this reference  
12 incorporated herein. Thereafter, Incredible Auto's interest in the Contract was in due course  
13 assigned to Nuvell. Pursuant to the Contract, Nuvell has a security interest in the Vehicle.  
14 Nuvell perfected that security interest by filing a Notice of Lien Filing with the Montana  
15 Department of Motor Vehicles. A true and correct copy of the Notice of Lien Filing is  
16 attached hereto as Exhibit "B" and by this reference incorporated herein. Upon information  
17 and belief, in July 2006, the Gates entered into a subsistent contract with Debtor wherein the  
18 Vehicle was traded to Debtor as part of the transaction. In the ordinary course of business,  
19 the dealer pays off the outstanding balance of the debt against the trade-in vehicle, and  
20 obtains title to the same. This did not happen in the present case. As a result, the full  
21 balance of the Contract is due and owing, and the Gates are in breach of the Contract.

22       E.     A description of Nuvell's collateral, including its location, is as follows:  
23                  2004 Kia Spectra, VIN KNAFE121445008986  
24 located in Debtor's possession.

1           F.     The fair market value of Nuvell's collateral is estimated to be at least  
 2 \$6,450.00.

3           G.     There are no other security interests or liens which have priority over that of  
 4 Nuvell.

5           H.     The Contract is in default for the December 14, 2006 installment in the  
 6 amount of \$389.78, and each monthly installment due thereafter, for a total amount in default  
 7 of \$778.46.

8           I.     This Motion is made under and pursuant to 11 U.S.C., §362(d)(i) and  
 9 §362(d)(ii).

10          J.     Other facts which are relevant in determining whether relief should be granted  
 11 are as follows: Failure to make payment on the Vehicle leaves Nuvell's interest in the  
 12 Vehicle inadequately protected. Nuvell did not consent to the trade in of the Vehicle without  
 13 payment of the balance owed. Nuvell cannot verify whether the Vehicle is properly insured  
 14 naming Nuvell as loss payee. Under applicable state law, if Debtor sells the Vehicle in the  
 15 ordinary course of business, Nuvell's security interest in the Vehicle may be jeopardized.

16          3.     Nuvell further represents that in the event the court grants its Motion, Nuvell  
 17 will seek foreclosure and liquidation of the above-described collateral in accordance with  
 18 applicable non-bankruptcy law, and will dispose of the collateral in a commercially  
 19 reasonable manner.

20          4.     Upon disposition, Nuvell shall account for all proceeds to the court and agrees  
 21 to turn over any proceeds in excess of Nuvell's allowed secured claim to the Trustee.

22          **WHEREFORE**, Nuvell Credit Company LLC respectfully requests the court to grant  
 23 this Motion to Modify the Stay imposed by §362(a) of the Bankruptcy Code.

1                   Dated this 13<sup>th</sup> day of February, 2007.  
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By /s/ Jared M. Le Fevre  
JARED M. LE FEVRE  
P. O. Box 2529  
Billings, MT 59103-2529  
Attorneys for Nuvell Credit Company  
LLC

## **NOTICE TO DEBTOR**

**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:**

## **NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at [www.mtb.uscourt.gov](http://www.mtb.uscourt.gov). In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

Dated this 13<sup>th</sup> day of February, 2007.

CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.

By /s/ Jared M. Le Fevre  
JARED M. LE FEVRE  
P. O. Box 2529  
Billings, MT 59103-2529  
Attorneys for Nuvell Credit Company  
LLC

## **CERTIFICATE OF SERVICE**

Under penalty of perjury, I hereby certify that on the 13<sup>th</sup> day of February, 2007, I served a true and exact copy of the foregoing by depositing the same in the U. S. Mail, first-class postage prepaid, addressed to the following:

Clarke B. Rice  
2951 King Ave West  
Billings, MT 59102  
By ECF Notice

William L. Needler  
555 Stokie Blvd Ste 500  
Northbrook, IL 60062  
By ECF Notice

Neal G. Jensen  
Assistant U.S. Trustee  
Liberty Center, Ste 204  
Great Falls, MT 59401  
By ECF Notice

Incredible Auto Sales LLC  
1832 King Ave West  
Billings, MT 59102

Diane Gates  
28 Redrock Drive  
Billings, MT 59102

Kenneth J. Gates  
28 Redrock Drive  
Billings, MT 59102

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/s/ Jared M. Le Fevre  
JARED M. LEFEVRE